



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 31, 1993

Ms. Barbara M. Elliott
Assistant City Attorney
City of Galveston
P.O. Box 779
Galveston, Texas 77553-0779

OR93-762

Dear Ms. Elliott:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 22820.

The Galveston Police Department (the "department") received an open records request for photographs that were taken at the scene of an automobile accident. You contend that the photographs come under the protection of sections 552.103 and 552.108 of the Government Code.²

Previous determinations of this office construing the predecessor statute of section 552.108 resolve your request. *See* Open Records Decision Nos. 378 (1983), 287 (1981), and 127 (1976). The city may withhold pursuant to section 552.108 all photographs taken at the scene of the accident during the pendency of the department's investigation.³

¹The Seventy-Third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46, at 988. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

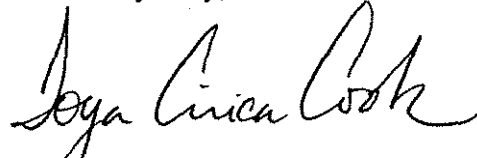
²We do not address here whether the department would be required to release these photographs pursuant to a subpoena issued during the course of a civil proceeding. *See* Gov't Code § 552.005(b) (Open Records Act does not create new privileges from discovery).

³We remind you that section 552.108 is a "discretionary" exception and can be waived with regard to these photographs. Such waiver would not, however, result in a "precedent" that would require the department to release any other photographs in the future. The waiver would only be with regard to the photographs at issue here.

See also Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we need not address your section 552.103 claims at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Toya Cirica Cook". The signature is fluid and cursive, with the first name "Toya" being the most prominent.

Toya Cirica Cook
Assistant Attorney General
Open Government Section

TCC/RWP/rho

Ref.: ID# 22820
ID# 22869
ID# 22873

cc: Mr. Conrad Dippel
President
Dippel Consulting Co., Inc.
P.O. Box 692289
Houston, Texas 77269-2289
(w/o enclosure)